

REGION LEGAL SERVICE OFFICE NAVAL DISTRICT WASHINGTON

THE COUNSELOR

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Sexual Assault Prevention and Response Instruction Update

SEXUAL ASSAULT PREVENTION AND RESPONSE INSTRUCTION UPDATE

On 13 August 2015, the Deputy Chief of Naval Operations issued OPNAVINST 1752.1C, a complete re-write of the Navy Sexual Assault Prevention and Response (SAPR) Program instruction. This new instruction includes many changes that commands must be familiar with. This article will highlight some of those important changes and provisions.

SAPR Command Program Requirements

- All incoming COs, OICs, XO's, and SELs must receive an in-brief from the SARC within 30 days of assuming command. They must also be briefed by a judge advocate (JAG) on Military Rule of Evidence 514, the victim – victim advocate privilege, sexual assault initial disposition authority, and the law concerning retaliation.
- Commanding officers must consult a JAG prior to case disposition. Only an O-6 with Special Court-Martial convening authority may dispose of sexual assault cases.
- If a command member is found guilty of a sexual assault offense, in either a military or civilian court, he or she is subject to mandatory administrative separation processing.
- All commands must have a SAPR point of contact to ensure compliance with SAPR Program requirements.
- Service members and civilians who supervise service members must receive annual, in person SAPR training. Sexual assault victims may request to complete this training in alternate settings, such as directly with the SARC.

SAPR Case Management Procedures

- SAPR Case Management Meetings (SACMGs) must meet in person monthly, even if there are no open cases. The installation CO or XO must chair the SACMG and the victim's CO must participate when an unrestricted report has been made.

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SEXUAL ASSAULT PREVENTION AND RESPONSE INSTRUCTION UPDATE

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Victim Care and Support

Sexual Assault Prevention and Response Instruction Update

- A Victim may request a Military Protective Order (MPO). Prior to issuing an MPO, a commanding officer must consult with NCIS to ensure the MPO will not compromise the investigation, but victim safety is paramount. If denied, the MPO request must be reviewed by the Installation Commanding Officer and first flag officer in the chain of command.
- If a victim of sexual assault committed misconduct related to the sexual assault, such as underage drinking, that misconduct is considered collateral misconduct. **Prior to acting on collateral misconduct, a commanding officer must consult a JAG.** Please note that when the alleged offenses fall under the purview of the Sexual Assault - Initial Disposition Authority (SA-IDA), then the victim's alleged collateral misconduct is also withheld to the SA-IDA. Commanding officers and/or SA-IDA may defer punishment for collateral misconduct until final disposition of the sexual assault case.
- If a victim of sexual assault is involuntarily separated within one year of final disposition of a sexual assault case, the separation must be reviewed by a flag officer.

Reporting Requirements for Unrestricted Reports

- Personnel incident reports per OPNAVINST 3100.6J should only list "sexual assault" as the type of incident, without providing more specific details. The reports should not include sensitive information that could violate the privacy of the individuals involved or that could be used to identify the victim or subject.
- Within 30 days, a voice report must be made to the first flag officer in the chain of command of both the victim and offender. The following should be discussed:
 - Specific information regarding the incident,
 - Prevention efforts,
 - Impact on the command,
 - Progress to resolution, and
 - Best practices.
- Existing reporting requirements to include OPNAV Form 1752/2 Sexual Assault Incident Response Oversight (SAIRO), NAVPERS Form 1752/1 Sexual Assault Disposition Record (SADR), and NAVPERS Form 1070/887 Sex Offender Accountability Record (SOAR) remain in effect.

TRANSGENDER POLICY UPDATES

Transgender Policy Updates

On 13 July 2015, Secretary of Defense Carter announced that Department of Defense (DoD) transgender policies may be shifting in the near future and directed two key efforts on this issue. First, he ordered a six-month working group to study the policy and readiness implications of allowing transgender persons to serve openly. Second, he directed Acting Under Secretary of Defense for Personnel and Readiness, Honorable Brad Carson, to act as the decision authority for all administrative separations of transgender service members.

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TRANSGENDER POLICY UPDATES

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The following policies with respect to transgender Sailors remain in effect pending these efforts:

- DoD Accessions Policy: DoDI 6130.03 prohibits transgender accessions. The OSD working group mentioned above will examine this policy closely over the coming months.
- BUMED policy does not permit medical treatment for gender reassignment. If a Sailor seeks hormone therapy, surgery, or other medical treatment for gender reassignment, that treatment will be denied if not supported by a medical justification independent of gender reassignment. The only exception to this BUMED policy is that military treatment facilities will provide mental health counseling to transgender Service Members who require it.
- Per a December 2014 memo from the Secretary of the Navy, Sailors must consult with military medical providers before getting any gender reassignment treatment from civilian medical providers. If the civilian treatment would impact mission readiness, the Sailor's commanding officer must approve it.
- Any command initiating processing of a Sailor for transgender-related actions, behaviors, or conditions should make a showing that the Service Member's ability to perform his or her military duties has been unacceptably impaired. Throughout the separation process in such a case, the command must ensure that the Sailor is treated with dignity and respect, must coordinate closely with Navy medical providers, and must focus on how transgender status affects the Sailor's ability to perform his or her duties.

HOLIDAY SEASON ETHICS REFRESHER

The Holiday Season offers many potential ethics pitfalls. Commands and employees are strongly encouraged to consult a judge advocate or Office of General Counsel ethics counselor with any specific questions. To help avoid problems, here are some key ethical rules to remember.

- A superior may accept a holiday gift from a subordinate provided that gift is not cash and is worth \$10.00 or less.
- A superior may accept personal hospitality from a subordinate for a party, open-house, or reception at the subordinate's home provided that hospitality is customarily offered.
- No federal employee may accept a gift from a contractor valued at more than \$20.00. Employees are encouraged to ask contractors what ethical restrictions their companies impose before offering any gifts to contractors.
- Federal employees participate in holiday social events in their personal capacities. Appropriated funds may not be used to pay for such social events, and government vehicles (GOVs) may not be used in conjunction with these events.
- Attendance at a holiday party hosted by a contractor is considered a gift from a prohibited source. Federal employees may only accept such a gift if the value of the food, drink, and entertainment is less than \$20.00, the invitation is extended based on a bona fide personal relationship, or another exception applies.

RESULTS OF TRIAL, 4TH QUARTER 2015

Navy O-1 was acquitted of sexual assault. This court was held on 28 August 2015.

Navy E-4 was sentenced to be confined for 2 months, be reduced to the paygrade of E-1, to forfeit \$1,031.00 per month for two months, and to be reprimanded after pleading guilty to two specifications of false official statements and four specifications of wearing unauthorized ribbons. This court was held on 24 July 2015.

Navy E-4 was sentenced to be confined for 6 months, to be reduced to the paygrade of E-1, to forfeit all pay and allowances, and to be discharged with a dishonorable discharge after being convicted of sexual assault and aggravated sexual assault. This court was held on 21 July 2015.

Navy E-6 was sentenced to be restricted for 60 days and to be reprimanded after being convicted of failure to obey a lawful general order, fraud against the United States, and dishonorable failure to pay a debt. This court was held on 1 July 2015.

COMMAND SERVICES STAFF JUDGE ADVOCATE DIRECTORY

The mission of command services department is to provide prompt and effective legal services to commands throughout the Naval District Washington area of responsibility. The following is a list of contacts for each installation:

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For NDW related issues, please contact:

NAVAL DISTRICT WASHINGTON

Staff Judge Advocate

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**Results of Trial,
4th Quarter 2015**

**Command Services
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Directory**

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